

ESTTA Tracking number: **ESTTA768596**

Filing date: **09/02/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

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| Name | Charles Bertini |
| Granted to Date of previous extension | 09/07/2016 |
| Address | 10825 Wheaton Ct Orlando, FL 32821 UNITED STATES |

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| Attorney information | James Bertini 423 Kalamath Street Denver, CO 80204 UNITED STATES jamesbertini@yahoo.com,iklych@yahoo.com Phone:303 572-3122 |
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Applicant Information

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|--------------------------------|---|---------------------------------|------------|
| Application No | 86659444 | Publication date | 05/10/2016 |
| Opposition Filing Date | 09/02/2016 | Opposition Period Ends | 09/07/2016 |
| International Registration No. | NONE | International Registration Date | NONE |
| Applicant | Apple Inc. 1 Infinite Loop Cupertino, CA 95014 UNITED STATES | | |

Goods/Services Affected by Opposition

Class 041. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Arranging, organizing, conducting, and presenting concerts, live musical performances, entertainment special events in the nature of musical and cultural events, arts and cultural events, theatrical entertainment in the nature of live theatrical performances, competitions in the field of entertainment, contests, fairs for entertainment purposes, musical or film festivals for cultural or entertainment purposes, and exhibitions for entertainment purposes; production and distribution of radio programs, television programs, and sound recordings; entertainment services, namely, providing ongoing television, radio, audio programs, video programs, podcast, and webcast programs in the field of entertainment; providing audio and video programming featuring entertainment, sports, music, information, and news by means of telecommunications networks; entertainment services, namely, providing streamed and downloadable audio and video content to users through a subscription service provided online via a communication network; provision of live entertainment and recorded entertainment, namely, musical performances; providing non-downloadable audio and video programming featuring entertainment, sports, music, informational, and current events news programming; providing websites and computer applications featuring entertainment information, sports information, music information, news in the fields of music and entertainment, and arts and culture information; providing websites and computer applications featuring in-

formation in the field of entertainment, music, sports, news in the fields of music and entertainment, and arts and culture; entertainment services, namely, providing information, schedules in the nature of concert schedules, reviews and personalized recommendations of entertainment in the nature of music, arts and cultural events, concerts, live musical and cultural performances, competitions in the field of entertainment, fairs for entertainment purposes, music or film festivals for cultural or entertainment purposes, and exhibitions for entertainment purposes; ticket reservation and booking services for entertainment, arts and cultural events, concerts, live musical performances, competitions in the field of entertainment, fairs for entertainment purposes, music or film festivals for entertainment purposes, and exhibitions for entertainment purposes; entertainment services, namely, providing reviews, entertainment surveys, and ratings, and providing interactive websites and computer applications for entertainment purposes for the posting and sharing of reviews, entertainment surveys, and ratings of users all relating to entertainment, art and cultural events, concerts, live musical performances, competitions in the field of entertainment, entertainment fairs, music or film festivals for cultural or entertainment purposes, and exhibitions for entertainment purposes; providing non-downloadable ringtones, pre-recorded music, video programs, and graphics for use on mobile communications devices via a global computer network and wireless networks; providing a website for the uploading, storing, sharing, viewing and posting of images, audio, videos, online journals, blogs, podcasts, and multimedia content; publication of books, periodicals, newspapers, newsletters, manuals, blogs, journals, and articles, all in the fields of music and entertainment; providing websites featuring non-downloadable publications in the nature of books, periodicals, newspapers, newsletters, manuals, blogs, journals, and articles, all in the fields of music and entertainment; news reporting in the field of music and entertainment

Grounds for Opposition

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| Priority and likelihood of confusion | Trademark Act Section 2(d) |
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Mark Cited by Opposer as Basis for Opposition

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|----------------------|--|-----------------------|------------|
| U.S. Application No. | 87060640 | Application Date | 06/05/2016 |
| Registration Date | NONE | Foreign Priority Date | NONE |
| Word Mark | APPLE JAZZ | | |
| Design Mark |  | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 041. First use: First Use: 1985/06/05 First Use In Commerce: 1985/06/05 Arranging, organizing, conducting, and presenting concerts, live musical performances, entertainment special events in the nature of musical and cultural events, arts and cultural events, theatrical entertainment in the nature of live theatrical performances, competitions in the field of entertainment, contests for entertainment purposes, musical or film festivals for cultural or entertainment purposes, and exhibitions for entertainment purposes; production and distribution of television programs and sound recordings; provision of live entertainment and recorded entertainment, namely, musical performances; providing websites featuring entertainment information, music information, news in the fields of music and | | |

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| | entertainment, and arts and culture information; providing websites featuring information in the field of entertainment, music, news in the fields of music and entertainment, and arts and culture; entertainment services, namely, providing information, schedules in the nature of concert schedules, reviews and personalized recommendations of entertainment in the nature of music, arts and cultural events, concerts, live musical and cultural performances, competitions in the field of entertainment, music or film festivals for cultural or entertainment purposes, and exhibitions for entertainment purposes; ticket reservation and booking services for entertainment, arts and cultural events, concerts, live musical performances, competitions in the field of entertainment, music or film festivals for entertainment purposes, and exhibitions for entertainment purposes; entertainment services, namely, providing reviews, and providing interactive websites for the posting and sharing of reviews, all relating to entertainment, art and cultural events, concerts, live musical performances, competitions in the field of entertainment, music or film festivals for cultural or entertainment purposes; providing a website for the uploading, storing, sharing, viewing and posting of images, audio, videos, online journals, blogs, podcasts, and multimedia content; publication of newsletters, blogs, journals, and articles, all in the fields of music and entertainment; providing websites featuring non-downloadable publications in the nature of newsletters, blogs, journals, and articles, all in the fields of music and entertainment; arranging, scheduling, producing, billing, researching and providing referrals for music production services; arranging and conducting educational competitions for students in the field of business; arranging and conducting educational competitions for students in the field of entertainment |
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| Attachments | 87060640#TMSN.png(bytes) Opposition.pdf(24739 bytes) |
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

| | |
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| Signature | /james bertini/ |
| Name | James Bertini |
| Date | 09/02/2016 |

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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| CHARLES BERTINI, |) | |
| |) | Opposition No. |
| Opposer |) | Serial No. 86659444 |
| |) | Mark: APPLE MUSIC |
| v. |) | Filing Date: June 11, 2015 |
| |) | Publication Date: May 10, 2016 |
| APPLE INC., |) | |
| |) | |
| Applicant. |) | |
| |) | |

NOTICE OF OPPOSITION

CHARLES BERTINI, Opposer, doing business at 10825 Wheaton Court, Orlando, Florida 32821 believes that he will be damaged by the registration of the mark shown in Serial No. 86659444 Class 41, filed by Apple Inc., 1 Infinite Loop Cupertino California 95014, Applicant, on June 11, 2015 and hereby opposes the Application.

The grounds for this Opposition are as follows:

1. Applicant filed a trademark application assigned Serial No. 86659444 in the United States Patent and Trademark Office on June 11, 2015 (“the Application”) to register the mark APPLE MUSIC (“the Applicant’s Mark”) for intended use in connection with “*Arranging, organizing, conducting, and presenting concerts, live musical performances, entertainment special events in the nature of musical and cultural events, arts and cultural events, theatrical entertainment in the nature of live theatrical performances, competitions in the field of entertainment, contests, fairs for entertainment purposes, musical or film festivals for cultural or entertainment purposes, and exhibitions for entertainment purposes; production and distribution of radio programs, television*

programs, and sound recordings; entertainment services, namely, providing ongoing television, radio, audio programs, video programs, podcast, and webcast programs in the field of entertainment; providing audio and video programming featuring entertainment, sports, music, information, and news by means of telecommunications networks; entertainment services, namely, providing streamed and downloadable audio and video content to users through a subscription service provided online via a communication network; provision of live entertainment and recorded entertainment, namely, musical performances; providing non-downloadable audio and video programming featuring entertainment, sports, music, informational, and current events news programming; providing websites and computer applications featuring entertainment information, sports information, music information, news in the fields of music and entertainment, and arts and culture information; providing websites and computer applications featuring information in the field of entertainment, music, sports, news in the fields of music and entertainment, and arts and culture; entertainment services, namely, providing information, schedules in the nature of concert schedules, reviews and personalized recommendations of entertainment in the nature of music, arts and cultural events, concerts, live musical and cultural performances, competitions in the field of entertainment, fairs for entertainment purposes, music or film festivals for cultural or entertainment purposes, and exhibitions for entertainment purposes; ticket reservation and booking services for entertainment, arts and cultural events, concerts, live musical performances, competitions in the field of entertainment, fairs for entertainment purposes, music or film festivals for entertainment purposes, and exhibitions for entertainment purposes; entertainment services, namely, providing reviews, entertainment surveys, and

ratings, and providing interactive websites and computer applications for entertainment purposes for the posting and sharing of reviews, entertainment surveys, and ratings of users all relating to entertainment, art and cultural events, concerts, live musical performances, competitions in the field of entertainment, entertainment fairs, music or film festivals for cultural or entertainment purposes, and exhibitions for entertainment purposes; providing non-downloadable ringtones, pre-recorded music, video programs, and graphics for use on mobile communications devices via a global computer network and wireless networks; providing a website for the uploading, storing, sharing, viewing and posting of images, audio, videos, online journals, blogs, podcasts, and multimedia content; publication of books, periodicals, newspapers, newsletters, manuals, blogs, journals, and articles, all in the fields of music and entertainment; providing websites featuring non-downloadable publications in the nature of books, periodicals, newspapers, newsletters, manuals, blogs, journals, and articles, all in the fields of music and entertainment; news reporting in the field of music and entertainment” in International Class 41 (“the Applicant’s Services”).

2. The Application was based on Applicant’s alleged intent to use the Applicant’s Mark in commerce (filing basis Section 1(b)).
3. The Application for Applicant’s Mark was published for opposition in the Official Gazette under filing basis Section 1(b) on May 10, 2016.
4. On June 6, 2016, the Opposer timely filed a request for a 90-day extension of time to oppose the Application for Applicant’s Mark, which was granted until September 7, 2016.

5. The Opposer is a provider of services “Arranging, organizing, conducting, and presenting concerts, live musical performances, entertainment special events in the nature of musical and cultural events, arts and cultural events, theatrical entertainment in the nature of live theatrical performances, competitions in the field of entertainment, contests for entertainment purposes, musical or film festivals for cultural or entertainment purposes, and exhibitions for entertainment purposes; production and distribution of television programs and sound recordings; provision of live entertainment and recorded entertainment, namely, musical performances; providing websites featuring entertainment information, music information, news in the fields of music and entertainment, and arts and culture information; providing websites featuring information in the field of entertainment, music, news in the fields of music and entertainment, and arts and culture; entertainment services, namely, providing information, schedules in the nature of concert schedules, reviews and personalized recommendations of entertainment in the nature of music, arts and cultural events, concerts, live musical and cultural performances, competitions in the field of entertainment, music or film festivals for cultural or entertainment purposes, and exhibitions for entertainment purposes; ticket reservation and booking services for entertainment, arts and cultural events, concerts, live musical performances, competitions in the field of entertainment, music or film festivals for entertainment purposes, and exhibitions for entertainment purposes; entertainment services, namely, providing reviews, and providing interactive websites for the posting and sharing of reviews, all relating to entertainment, art and cultural events, concerts, live musical performances, competitions in the field of entertainment, music or film festivals for cultural or entertainment purposes; providing a website for the uploading, storing,

sharing, viewing and posting of images, audio, videos, online journals, blogs, podcasts, and multimedia content; publication of newsletters, blogs, journals, and articles, all in the fields of music and entertainment; providing websites featuring non-downloadable publications in the nature of newsletters, blogs, journals, and articles, all in the fields of music and entertainment; arranging, scheduling, producing, billing, researching and providing referrals for music production services; arranging and conducting educational competitions for students in the field of business; arranging and conducting educational competitions for students in the field of entertainment” which services appear to be the same or similar as those that Applicant intends to provide, based on the Application.

6. Opposer is now and for many years has been providing services as and known by the Opposer’s mark of APPLE JAZZ (“Opposer’s Mark”) identifying Opposer as the source of a wide variety of services, including those which are the same as or substantially identical to services intended to be offered by Applicant under its alleged mark of APPLE MUSIC.

7. Since long prior to any date which may be claimed by Applicant, Opposer on its own behalf has been, and is now engaged in the use of Opposer’s Mark in interstate commerce and internationally for the services identified in Paragraph 4 hereinabove.

8. Since long prior to any date which may be claimed by Applicant, Opposer on its own behalf has been, and is now engaged in the sale under Opposer’s Mark for the services identified in Paragraph 4 hereinabove and related thereto under Opposer’s Mark.

9. Opposer has made substantial investment in advertising and promoting his services under his marks since their initial use, and has extensively used, advertised and promoted his services bearing these marks throughout various channels of trade in commerce, with

the result that Opposer's customers have come to know and recognize his marks and associate the same with Opposer and/or the services sold by Opposer in the United States and abroad.

10. Opposer filed an application Serial No. 87060640 for the trademark APPLE JAZZ in international class 41, dated June 5, 2016 with first use in commerce date at least as early as June 5, 1985.

11. Applicant's Mark APPLE MUSIC is nearly identical to the Opposer's Mark APPLE JAZZ. Jazz is a music genre. The Applicant's Mark APPLE MUSIC is confusingly similar in meaning and appearance to the Opposer's Mark APPLE JAZZ. The Applicant's registration and use of the APPLE MUSIC Mark would likely create confusion, mistake or deception in the minds of prospective purchasers as to the origin or source of the Opposer's Services associated with APPLE JAZZ Mark.

12. The use by Opposer of the Opposer's Mark for the Opposer's services described herein, is long prior to any date which may be lawfully claimed by Applicant, and Opposer has priority.

13. Upon information and belief, Applicant intends to sell and distribute its services through the same channels of trade as Opposer, and direct its respective services to the same ultimate consumer as Opposer.

14. The Opposer's Mark and Applicant's Mark are confusingly similar when applied to the services of the parties.

15. The services of Applicant and Opposer are identical in part, substantially related in part, and generally related in part, and Applicant's intended use of APPLE MUSIC in connection with its services is without the consent or permission of Opposer.

16. Since Opposer owns the Opposer's Mark by virtue of prior use, mistake or deception as to the source of origin of the goods will arise and will injure and damage the Opposer and his goodwill.

17. The registration of the mark APPLE MUSIC to Applicant will cause the relevant purchasing public to erroneously assume and thus be confused, misled, or deceived, that Applicant's services are made by, licensed by, controlled by, or otherwise authorized by Opposer.

18. Opposer believes that he will be damaged by registration of the Applicant's Mark.

19. Trademark Act Section 2(d) bars registration of an applied-for mark that so resembles a mark previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods and/or services of the applicant, to cause confusion for a potential consumer as to the source of the goods and/or services. *See* 15 U.S.C. §1052(d).

WHEREFORE, because the marks are highly similar and the services are closely related, consumers are likely to be confused as to the source of Applicant's services. Accordingly, Opposer respectfully requests that the application for registration of the mark APPLE MUSIC, Serial No. 86659444 filed on June 11, 2015 be denied under Section 2(d) and that the Opposition be sustained.

September 2, 2016

Submitted for Opposer Charles Bertini

By: James Bertini/_____

JAMES BERTINI
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CERTIFICATE OF SERVICE

I hereby certify that this correspondence is being deposited in the United States Postal Service as first class mail, postage prepaid, on September 2, 2016, in an envelope addressed to:

Erin Hickey
Apple Inc.
MS: 169-3IPL
1 Infinite Loop
Cupertino, CA 95014

Simultaneously an electronic copy was sent to trademarkdocket@apple.com.

____/James Bertini/_____